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Angela Reynolds, Environmental Officer
 Department of Planning & Building: Sports Park DEIR
 City of Long Beach
 333 West Ocean Blvd, 7th Floor
 Long Beach, California 90802

February 8, 2005

Dear City of Long Beach Department of Planning and Building:

Greetings. I hope all is well.

I am writing on behalf of the Native American Law Student Association at the University of California at Los Angeles School of Law in order to comment on the Draft Environmental Impact Report prepared for the Long Beach Sports Park. We hope that you will give attention and respect to our comments.

According to the Draft EIR Executive Summary, at page 1-2, "potential impacts to archaeological resources" (which we assume to include cultural resources) was a major issue/concern raised at the scoping meeting. The Draft EIR says that "several publications were consulted" in the cultural, historic, and archaeological resources review, Section 4.6, page 4.6-9, but we are concerned that there were insufficient efforts made to conduct meaningful consultations Tongva **people** and governments, as is required under section 106 of the National Historic Preservation Act and 36 C.F.R. part 800.

The Draft EIR concluded that "there are no known prehistoric resources on the site[.]" Section 4.6, page 4.6-10, but goes on to say that "it is possible that unknown buried prehistoric archaeological resources will be encountered during ground disturbing activities." Section 4.6, page 4.6-12. Comments received during scoping note the possibility of "prehistoric activity" on the site, and Ms. Gonzalez, speaking at the public scoping meeting, identified the site as a Tongva site. Section 4.6, page 4.6-12. A letter received indicates that the site may be in the vicinity of a prehistoric village known as 'Ahwaanga. Section 4.6, page 4.6-13. Oral comments indicated that there may be burials on the project site. Section 4.6, page 4.6-14. Thus, we are concerned that the

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City of Long Beach may be building upon and disturbing an area where Tongva ancestors are buried.

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The Draft EIR states that “[i]n the unlikely event that human remains are discovered, standard procedures for the respectful handling of human remains during the earthmoving activities would be adhered to as described in the mitigation measures” Section 4.6, page 4.6-14; Executive Summary, page 1-22. We urge that the discovery and/or uncovering of any human remains at the project site be treated as an unanticipated discovery (especially so given the Draft EIR language describing this as an “unlikely event”) per 36 C.F.R. part 800.13, and that appropriate consultation and mitigation measures be taken, as required by section 106 of the National Historic Preservation Act and 36 C.F.R. part 800.13(c). We urge that measures to be taken to avoid **any** disturbance to or disinterment of human remains at the project site.

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Moreover, Ms. Gonzales’ comments at the scoping meeting also indicate that the site may be a Tongva cultural site eligible for listing on the National Register of Historic Places under the provisions of section 106 of the National Historic Preservation Act, 36 C.F.R. part 800, and National Park Service Bulletin 38, which provides protection for Traditional Cultural Properties (TCPs). However, the Draft EIR states that “without evidence of continuing use of the area as a TCP it is difficult to address the contention that a Native American sacred site is located within the project area.” Section 4.6, page 4.6-14.

We again express our concern that sufficient measures were not taken in any attempt to gather such information from Tongva persons and governments that would allow for a determination of whether there exists a TCP on the project site. The Draft EIR does say that “the information provided by the local Native American groups may be considered by the project decision makers[,]” Section 4.6, page 4.6-14, but we are concerned that there has not been any record of consultation with Tongva governing bodies, including the Gabrieleno Tongva, a tribe recognized by the state of California. We urge that you engage in such consultation(s).

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The Draft EIR further states that there will be “resource monitoring during project grading[,]” Section 4.6, page 4.6-17, and that if any “archaeological materials [are] identified during construction[,]” an agreement will be negotiated with “a suitable repository” for the permanent care of these “materials.” Section 4.6, page 4.6-18. Though we strongly disagree with characterizing and/or referring to human remains as “archaeological materials,” we assume that human remains, as well as associated funerary items, are included within this terminology.

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We urge that you not disturb any human remains, funerary items, or any other items that may be on the project site. Instead, we urge that you follow the provisions of California Public Resources Code section 5097.9, which provides that “no public agency shall cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property....” Though we are aware that the public property of cities is exempt from this provision, we urge that you show respect for the sites and ancestors of the Tongva people and not take any action—such as unearthing, removing, or transferring human remains, or disturbing or degrading any cultural site(s)—that is contrary their wishes and/or fundamental human rights principles and basic principles of human dignity.

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In closing, we ask that you accord the Tongva people, their ancestors, and their cultural sites the same rights and dignity that are accorded to others who are newcomers to and guests on their lands.

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Sincerely,

Eric Sanchez
President

A handwritten signature in black ink, appearing to read "Eric Sanchez", written over a horizontal line.

Native American Law Student Association
University of California at Los Angeles School of Law

UNIVERSITY OF CALIFORNIA, LOS ANGELES, NATIVE AMERICAN LAW STUDENT ASSOCIATION

O-3-1

This comment focuses on the Section 106 requirement for Native American consultation. The cultural resource compliance work completed for the Draft EIR was designed to comply with the requirements of CEQA. At the time the work was completed, and at the present time, there is no CEQA requirement for Native American consultation; however, tribes are welcome to comment during the public review period.

O-3-2

This comment summarizes information contained in the Draft EIR and expresses concern that the site may contain Native American burials and/or cultural remains of the Tongva. The comment also assumes that a “site” exists on the property based on the comments of Ms. Gonzalez, a speaker at the Draft EIR Scoping Meeting in February 2004. The information summarized in Section 4.6 of the Draft EIR explains that, due to the history of undocumented fill and soil disturbance on site, it is not expected that Native American burials and/or cultural remains will be uncovered. Therefore, the statement of the Draft EIR that there are no known prehistoric resources on site accurately reflects the results of the records search and cultural resource surveys conducted for the project. However, no survey can be 100 percent certain because archaeological sites may be covered by vegetation or may be deeply buried under alluvium. The indication that “Ahwaanga,” an ethnographic village, may have been in the vicinity of the project site is possible, but as noted in the Draft EIR, pages 4.6-12 through 4.6-15, there is no physical evidence of such a village within the project boundaries. Further, there has never been an archaeological site documented within the project site.

As stated in the Draft EIR, it is not expected that Native American burials and/or cultural remains will be uncovered due to the history of undocumented fill and soil disturbance on site. However, in the event that they are, mitigation measures are included to ensure their protection, including Mitigation Measure 4.6.5, which requires archaeological monitoring of all grading activity and curation of any materials finds. In addition, Mitigation Measure 4.6.6 requires that any human remains, if found, be examined by the County Coroner, who will make a determination of origin and disposition pursuant to Public Resources Code Section 5097.98.

O-3-3

The comment focuses on Section 106 compliance issues, which is not the correct regulatory framework for the Long Beach Sports Park Draft EIR. As such, addressing unanticipated discoveries in compliance with 36 CFR 800.13 is neither appropriate nor required. Treatment of “accidental discoveries” under CEQA are addressed in Public Resources Code 21083.2(i). The mitigation as included in the Draft EIR is adequate and appropriate based on these requirements. Please see Mitigation Measures 4.6.5 and 4.6.6.

O-3-4

The comment references Section 106 compliance issues, which is not the correct regulatory framework for the Proposed Project.

The comment also assumes that a “site” exists on the property based on the comments of Ms. Gonzalez, a speaker at the Draft EIR Scoping Meeting in February 2004, and then indicates the “site” may be eligible for listing in the National Register. To be eligible for listing in the National Register, whether as an archaeological site or as a Traditional Cultural Property (TCP), the site must be considered significant when assessed against four criteria. These criteria address the association of the site with important events in history (Criterion A), association with important historical figures (Criterion B), retention by the site of unique characteristics or that the site represents the work of a master (Criterion C), or the site possesses important data that will help address important research questions (Criterion D). Since no physical remains (e.g., midden soil, ecofactual shell, artifacts, etc.) of a cultural resource were identified within the project site, the “site” discussed in the letter does not meet any of these criteria. Recognizing that some Native American resources are eligible for the National Register because of their relationship to the tribal people, the National Register established guidelines for addressing TCPs. These TCPs are assessed by criteria presented in Bulletin 38 of the National Park Service, which states that a TCP is a place that is “eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.” There is no evidence that the project site represents any such place of importance, with the exception of the assertion by Ms. Gonzalez at the Draft EIR Scoping Meeting and as repeated by others, that an ethnographic village (“Ahwaanga”) may be in the vicinity. As indicated above, this village may or may not have been located in the vicinity of the project site; however, there is no physical evidence of such a village within the project boundaries.

Finally, the project site has been so disturbed by previous fill and excavation activities and railroad industrial and oil extraction uses dating back over 100 years, that the integrity of the property as it relates as a TCP has been significantly compromised. Integrity of a TCP is considered in two ways, by looking at the integrity of the association of the area with a group’s traditions and the overall integrity of the property’s condition. The project site possesses neither of these characteristics of integrity.

As discussed above, consultation with tribal people or governments was not required under the regulatory framework for the project, and consultation was not conducted. The comment refers to the Section 106 consultation procedure, which, as described above, is not the appropriate regulatory framework for the Proposed Project under the requirements of CEQA and the State CEQA Guidelines.

O-3-5

The Draft EIR does not confuse the term “archeological materials” with human remains. Human remains and associated funerary objects (as well as unassociated funerary objects and objects of cultural patrimony) are not considered archaeological materials, as discussed in this section of the Draft EIR. Human remains and funerary objects would be handled consistent with the discussion of how human material is handled. Briefly restated, this would involve notification of the coroner, contact with the Native American Heritage Commission (NAHC) by the coroner, designation of a Most Likely Descendent (MLD) by the NAHC, and coordination with the MLD on disposition of the

materials. The Draft EIR section addresses other archaeological materials that might be encountered. Mitigation Measure 4.6.5 is specific to archaeological materials, and Mitigation Measure 4.6.6 is specific to human remains.

O-3-6

There is no evidence of “human remains, funerary items, or any other [cultural] items” on site. In the event that cultural resources were identified during implementation of the project (although based on the cultural resource survey of the property this does not seem likely), they would be addressed consistent with the Public Resources Code.

The comment notes that the public property of cities is exempt from this provision. The City is fully committed to complying with the provisions of Public Resources Code Section 5097.98. See Mitigation Measures 4.6.5 and 4.6.6.

O-3-7

This comment is a conclusion to comments made above. See Responses to Comments O-3-1 through O-3-6. The City cannot protect resources that may or may not have been present on site in the past but which do not currently exist. The City is committed to protecting previously unknown archaeological materials and/or human burials, if any, through resource monitoring and appropriate disposition of archaeological finds. Mitigation Measures 4.6.5 through 4.6.6 ensure that the City’s commitment to protect unknown cultural resources is carried out for the Proposed Project.